

FIRST REGULAR SESSION  
[P E R F E C T E D]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 5**  
**94TH GENERAL ASSEMBLY**

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INTRODUCED BY SENATOR LOUDON.

Offered April 16, 2007.

Senate Substitute adopted, April 16, 2007.

Taken up for Perfection April 16, 2007. Bill declared Perfected and Ordered Printed, as amended.

TERRY L. SPIELER, Secretary.

0310S.06P

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**AN ACT**

To repeal sections 195.503, 566.147, 573.025, 573.035, 573.037, and 650.120, RSMo, and to enact in lieu thereof nine new sections relating to sexual offenses against children, with penalty provisions and an emergency clause for certain sections.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 195.503, 566.147, 573.025, 573.035, 573.037, and  
2 650.120, RSMo, are repealed and nine new sections enacted in lieu thereof, to be  
3 known as sections 195.503, 537.047, 566.147, 573.025, 573.035, 573.037, 573.038,  
4 650.120, and 1, to read as follows:

195.503. As used in sections 195.501 to 195.511, the following terms  
2 mean:

- 3 (1) "Department", the department of public safety;  
4 (2) "Director", the director of the department of public safety;  
5 (3) "Drug laws", all laws regulating the production, sale, prescribing,  
6 manufacturing, administering, transporting, having in possession, dispensing,  
7 distributing, or use of controlled substances, as defined in section 195.010;  
8 (4) "Multijurisdictional enforcement group", or "MEG", a combination of  
9 political subdivisions established under sections 573.500 and 573.503, RSMo,  
10 section 178.653, RSMo, and section 311.329, RSMo, to [enforce the drug laws of

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

11 this state] investigate and enforce computer, Internet-based, narcotics,  
12 and drug violations.

537.047. 1. Any person who, while a child or minor as defined by  
2 section 573.010, RSMo, was a victim of a violation of sections 573.023,  
3 573.025, 573.035, or 573.037, RSMo, and who suffers physical or  
4 psychological injury or illness as a result of such violation, shall be  
5 entitled to bring a civil action to recover the actual damages sustained  
6 as a result of the violation, and shall also be entitled to recover the  
7 costs of the civil action and reasonable fees for attorneys and expert  
8 witnesses. A psychological injury or illness as described under this  
9 section need not be accompanied by physical injury or illness. Any  
10 person deemed to have sustained injury or illness as described by this  
11 section shall be deemed to have sustained damages of no less than one  
12 hundred fifty thousand dollars in value.

13 2. Any action described under this section shall be commenced  
14 within ten years of the plaintiff attaining the age of twenty-one, or  
15 within three years of the date the plaintiff discovers that the injury or  
16 illness was caused by the violation of an offense enumerated in  
17 subsection 1 of this section, whichever later occurs.

18 3. A cause of action under this section may arise only if the  
19 violation that caused the injury occurs on or after August 28, 2007.

566.147. 1. Any person who, since July 1, 1979, has been or hereafter has  
2 pleaded guilty or nolo contendere to, or been convicted of, or been found guilty of  
3 violating any of the provisions of this chapter or the provisions of subsection 2 of  
4 section 568.020, RSMo, incest; section 568.045, RSMo, endangering the welfare  
5 of a child in the first degree; subsection 2 of section 568.080, RSMo, use of a child  
6 in a sexual performance; section 568.090, RSMo, promoting a sexual performance  
7 by a child; section 573.023, RSMo, sexual exploitation of a minor; section 573.025,  
8 RSMo, promoting child pornography in the first degree; section 573.035, RSMo,  
9 promoting child pornography in the second degree; section 573.037, RSMo,  
10 possession of child pornography, or section 573.040, RSMo, furnishing  
11 pornographic material to minors; shall not reside within one thousand feet of any  
12 public school as defined in section 160.011, RSMo, or any private school giving  
13 instruction in a grade or grades not higher than the twelfth grade, or child-care  
14 facility as defined in section 210.201, RSMo, which is in existence at the time the  
15 individual begins to reside at the location.

16           2. If such person has already established a residence and a public school,  
17 a private school, or child-care facility is subsequently built or placed within one  
18 thousand feet of such person's residence, then such person shall, within one week  
19 of the opening of such public school, private school, or child-care facility, notify  
20 the county sheriff where such public school, private school, or child-care facility  
21 is located that he or she is now residing within one thousand feet of such public  
22 school, private school, or child-care facility and shall provide verifiable proof to  
23 the sheriff that he or she resided there prior to the opening of such public school,  
24 private school, or child-care facility.

25           3. [For purposes of this section, "resides" means sleeps in a residence,  
26 which may include more than one location and may be mobile or transitory] **The**  
27 **distance specified in subsections 1 and 2 of this section shall be**  
28 **determined by measuring the shortest distance between the property**  
29 **line of the person's residence and the property line of the school or**  
30 **child-care facility.**

31           4. Violation of the provisions of subsection 1 of this section is a class D  
32 felony except that the second or any subsequent violation is a class B  
33 felony. Violation of the provisions of subsection 2 of this section is a class A  
34 misdemeanor except that the second or subsequent violation is a class D felony.

573.025. 1. A person commits the crime of promoting child pornography  
2 in the first degree if, knowing of its content and character, such person possesses  
3 with the intent to promote or promotes [obscene material that has a child as one  
4 of its participants or portrays what appears to be a child as a participant or  
5 observer of sexual conduct] **child pornography of a child less than fourteen**  
6 **years of age or what appears to be a child less than fourteen years of**  
7 **age.**

8           2. Promoting child pornography in the first degree is a class B felony  
9 unless the person knowingly promotes such material to a minor, in which case it  
10 is a class A felony. **No person who pleads guilty to or is found guilty of**  
11 **such crime shall be eligible for probation, parole, or conditional release**  
12 **for a period of three calendar years.**

13           3. Nothing in this section shall be construed to require a provider of  
14 electronic communication services or remote computing services to monitor any  
15 user, subscriber or customer of the provider, or the content of any communication  
16 of any user, subscriber or customer of the provider.

573.035. 1. A person commits the crime of promoting child pornography

2 in the second degree if knowing of its content and character such person  
3 possesses with the intent to promote or promotes child pornography [or obscene  
4 material that has a minor as one of its participants, or portrays what appears to  
5 be a minor as a participant or observer of sexual conduct] **of a minor under the**  
6 **age of eighteen or what appears to be a minor under the age of**  
7 **eighteen.**

8 2. Promoting child pornography in the second degree is a class C felony  
9 unless the person knowingly promotes such material to a minor, in which case it  
10 is a class B felony. **No person who is found guilty of, pleads guilty to, or**  
11 **is convicted of promoting child pornography in the second degree shall**  
12 **be eligible for probation.**

573.037. 1. A person commits the crime of possession of child  
2 pornography if, knowing of its content and character, such person possesses any  
3 [obscene material that has a child as one of its participants or portrays what  
4 appears to be a child as an observer or participant of sexual conduct] **child**  
5 **pornography.**

6 2. Possession of child pornography is a class [D] C felony unless the  
7 person **possesses more than twenty images of child pornography or has**  
8 **pleaded guilty to or has been found guilty of an offense under this section, in**  
9 **which case it is a class [C] B felony.**

573.038. 1. **In any criminal proceeding, any property or material**  
2 **that constitutes child pornography shall remain in the care, custody,**  
3 **and control of either the state or the court.**

4 2. (1) Notwithstanding Missouri Rule of Criminal Procedure  
5 25.03 or any other rule or statute to the contrary, a court shall deny, in  
6 any criminal proceeding, any request by the defendant to copy,  
7 photograph, duplicate, or otherwise reproduce any property or  
8 material that constitutes child pornography, so long as the state makes  
9 the property or material reasonably available to the defendant.

10 (2) For the purposes of subdivision (1) of this subsection,  
11 property or material shall be deemed to be reasonably available to the  
12 defendant if the state provides ample opportunity for inspection,  
13 viewing, and examination at a state or other governmental facility of  
14 the property or material by the defendant, his or her attorney, and any  
15 individual the defendant may seek to qualify to furnish expert  
16 testimony at trial.

650.120. 1. Subject to appropriation, the department of public safety shall  
2 create a program to distribute grants to multijurisdictional Internet cyber crime  
3 law enforcement task forces, **multijurisdictional enforcement groups, as**  
4 **defined in section 195.503, RSMo, that are investigating Internet sex**  
5 **crimes against children,** and other law enforcement agencies. **Not more**  
6 **than three percent of the money appropriated may be used by the**  
7 **department to pay the administrative costs of the grant program.** The  
8 grants shall be awarded and used to pay the salaries of detectives and computer  
9 forensic personnel whose focus is investigating Internet sex crimes against  
10 children, including but not limited to enticement of a child, possession or  
11 promotion of child pornography, [and to] provide funding for the training of law  
12 enforcement personnel, **and purchase necessary equipment, supplies, and**  
13 **services.** The funding for such training may be used to cover the travel expenses  
14 of those persons participating.

15 2. A panel is hereby established in the department of public safety to  
16 award grants under this program and shall be comprised of the following  
17 members:

18 (1) The director of the department of public safety, or his or her designee;

19 (2) Two members shall be appointed by the director of the department of  
20 public safety from a list of six nominees submitted by the Missouri Police Chiefs  
21 Association;

22 (3) Two members shall be appointed by the director of the department of  
23 public safety from a list of six nominees submitted by the Missouri Sheriffs'  
24 Association;

25 (4) Two members of the state highway patrol shall be appointed by the  
26 director of the department of public safety from a list of six nominees submitted  
27 by the Missouri State Troopers Association;

28 (5) One member of the house of representatives who shall be appointed  
29 by the speaker of the house of representatives; and

30 (6) One member of the senate who shall be appointed by the president pro  
31 tem.

32 The panel members who are appointed under subdivisions (2), (3), and (4) of this  
33 subsection shall serve a four-year term ending four years from the date of  
34 expiration of the term for which his or her predecessor was appointed. However,  
35 a person appointed to fill a vacancy prior to the expiration of such a term shall  
36 be appointed for the remainder of the term. Such members shall hold office for

37 the term of his or her appointment and until a successor is appointed. The  
38 members of the panel shall receive no additional compensation but shall be  
39 eligible for reimbursement for mileage directly related to the performance of  
40 panel duties.

41 3. Local matching amounts, which may include new or existing funds or  
42 in-kind resources including but not limited to equipment or personnel, are  
43 required for multijurisdictional Internet cyber crime law enforcement task forces  
44 and other law enforcement agencies to receive grants awarded by the panel. Such  
45 amounts shall be determined by the state appropriations process or by the panel.

46 4. When awarding grants, priority should be given to newly hired  
47 detectives and computer forensic personnel.

48 5. The panel shall establish minimum training standards for detectives  
49 and computer forensic personnel participating in the grant program established  
50 in subsection 1 of this section.

51 6. Multijurisdictional Internet cyber crime law enforcement task forces  
52 and other law enforcement agencies participating in the grant program  
53 established in subsection 1 of this section shall share information and cooperate  
54 with the highway patrol and with existing Internet Crimes Against Children task  
55 force programs.

56 7. The panel may make recommendations to the general assembly  
57 regarding the need for additional resources or appropriations.

58 8. **The power of arrest of any peace officer who is duly**  
59 **authorized as a member of a multijurisdictional Internet cyber crime**  
60 **law enforcement task force shall only be exercised during the time such**  
61 **peace officer is an active member of such task force and only within the**  
62 **scope of the investigation on which the task force is**  
63 **working. Notwithstanding other provisions of law to the contrary, such**  
64 **task force officer shall have the power of arrest, as limited in this**  
65 **subsection, anywhere in the state and shall provide prior notification**  
66 **to the chief of police of a municipality or the sheriff of the county in**  
67 **which the arrest is to take place. If exigent circumstances exist, such**  
68 **arrest may be made and notification shall be made to the chief of police**  
69 **or sheriff as appropriate and as soon as practical. The chief of police**  
70 **or sheriff may elect to work with the multijurisdictional Internet cyber**  
71 **crime law enforcement task force at his or her option when such task**  
72 **force is operating within the jurisdiction of such chief of police or**

73 **sheriff.**

74 **9.** Under section 23.253, RSMo, of the Missouri sunset act:

75 (1) The provisions of the new program authorized under this section shall  
76 sunset automatically six years after June 5, 2006, unless reauthorized by an act  
77 of the general assembly; and

78 (2) If such program is reauthorized, the program authorized under this  
79 section shall sunset automatically twelve years after the effective date of the  
80 reauthorization of this section; and

81 (3) This section shall terminate on September first of the calendar year  
82 immediately following the calendar year in which the program authorized under  
83 this section is sunset.

**Section 1. A child custody order may be modified if a parent  
2 having sole or joint custody of a child is in a continuing social  
3 relationship of a romantic or intimate nature with a person required  
4 to register as a sex offender under section 589.400 to 589.425, RSMo.**

Section B. Because of the need to protect the citizens of this state, the  
2 repeal and reenactment of sections 195.503, 566.147, and 650.120 of this act is  
3 deemed necessary for the immediate preservation of the public health, welfare,  
4 peace and safety, and is hereby declared to be an emergency act within the  
5 meaning of the constitution, and the repeal and reenactment of sections 195.503,  
6 566.147, and 650.120 of this act shall be in full force and effect upon its passage  
7 and approval.

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